

3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169-5996  
Facsimile (702) 949-8321  
Telephone (702) 949-8320

Robert M. Charles, Jr. NV State Bar No. 006593  
Email: rcharles@lrlaw.com  
John Hinderaker AZ State Bar No. 018024  
Email: jhinderaker@lrlaw.com  
Marvin Ruth NV State Bar No. 10979  
Email: mruth@lrlaw.com

Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE  
COMPANY,

Debtor.

Case No. BK-S-06-10725-LBR

Chapter 11

**DECLARATION OF GEOFFREY L.  
BERMAN IN SUPPORT OF  
OMNIBUS OBJECTION OF USACM  
TRUST TO PROOFS OF CLAIM  
BASED UPON INVESTMENT IN  
THE GESS LOAN**

**Date of Hearing: August 30, 2011  
Time of Hearing: 10:30 a.m.  
Estimated Time for hearing: 10 min.**

Geoffrey L. Berman declares under penalty of perjury:

1. I am an adult person competent to testify in court.
2. I make this declaration based upon my personal knowledge, and upon the records USA Commercial Mortgage Company.
3. I am the Trustee of the USACM Liquidating Trust ("USACM Trust"), which is an entity created by the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization ("Plan"), in the jointly-administered bankruptcy cases, In re USA Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States Bankruptcy Court for the District of Nevada.

4. USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding for an acquisition and development loan to a borrower identified as “6425 Gess, Ltd.” A copy of the Offer Sheet is attached hereto as **Exhibit B** and incorporated by this reference. The total loan amount proposed was \$26,500,000. The Offer Sheet described the investment as a “First Trust Deed Investment” and noted that the investment would be secured by a first deed of trust on an 810-unit apartment complex located on South Gessner Drive in Houston, Texas. The Offer Sheet further provided a loan to value percentage of 76% supported by an October 18, 2004 appraisal by The George Kahle Group. Pursuant to the Offer Sheet, the loan proceeds would be used to refinance the collateral.

5. On April 14, 2005, Borrower made and delivered to various lenders, including the Direct Lenders identified in **Exhibit A**, a “Promissory Note Secured by Deed of Trust” (the “Note”) and a Loan Agreement. The Note and Loan Agreement provided for a loan of \$26,500,000 to refinance the property. The Note was secured by a “Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing” from the Borrower in favor of the Direct Lenders that was recorded in the official records of Harris County, Texas on April 21, 2005. The Note was also supported by an Unconditional Guaranty executed by Tracy D. Suttles on April 15, 2005.

6. The USACM “Loan Summary” dated July 31, 2006 and filed in this case shows that Borrower was “Non-performing” on the Note as of July 31, 2006. During this bankruptcy case through the transfer of servicing to Compass, USACM treated the Direct Lenders with respect to any interim payments by the borrower in accordance with this Court’s orders.

1 I declare under penalty of perjury that the foregoing is true and correct.

2 Dated: July 14, 2011

3  
4 /s/ Geoffrey L. Berman

Geoffrey L. Berman

5 Copy of the foregoing (without exhibits)

6 Mailed by First Class postage prepaid

7 U.S. Mail on July 14, 2011 to the

8 Investors in the Gess

9 Loan listed on Exhibit A.

10  
11 s/ Matt Burns

12 Matt Burns

13 Lewis and Roca LLP  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26